PET 15-2 LIBYA

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ACTION AF-04

INFO OCT-01 SS-14 NSC-10 NSCE-00 INR-05 CIAE-00 NSAE-00

L-02 AID-10 E-03 COM-02 PM-03 RSR-01 RSC-01 OEP-01

EUR-10 OPIC-01 CIEP-01 /069 W

R 2208222 JAN 72
FM AMEMBASSY TRIPOLI
TO SECSTATE WASHDC 8411
INFO AMEMBASSY BENGHAZI
AMEMBASSY LONDON

C O N F I D E N T I A L TRIPOLI 0123

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DEPARTMENT OF STATE A/CRC/MR 06/108

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SUBJECT: COMPENSATION FOR NATIONALIZED US PRIVATE PROPERTIES

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REF: (A) TRIPOLI 2302; (B) STATE 1346

SUMMARY: THIS TELEGRAM SEEKS TO CLEAR UP ANY MISUNDERSTANDING CONCERNING OUR PREVIOUS RECOMMENDATION THAT WE BE AUTHORIZED TO RAISE QUESTION OF COMPENSATION FOR NATIONALIZED US INTERESTS. IN OUR VIEW CONCLUSION OF CURRENT POST-WHEELUS NEGOTIATIONS WOULD PRESENT MOST NATURAL AND CONVENIENT FORUM IN WHICH TO RAISE ISSUE. ACTION REQUESTED: AUTHORIZATION TO MAKE A DEMARCHE TO LARG ON THIS SUBJECT.

1. THERE APPEARS TO BE SOMETHING OF A MISUNDERSTANDING REGARDING OUR RECOMMENDATION ON A DEMARCHE TO THE LARG MD THE SUBJECT OF NATIONALIZATION OF US INTERESTS (PARA 8E REFTEL A). WE DID NOT INTEND SUGGEST RAISING QUESTION OF PROMPT AND ADEQUATE COMPENSATION FOR NATIONALIZED PROPERTIES HERE IN NARROW CONTEXT OF INTERESTS OF US OIL COMPANIES. NOR DID WE INTEND PROPOSE A DEMARCHE WHICH COULD BE DIRECTLY LINKED TO BP NATIONALIZATION, WHICH WE AGREE COULD WELL HAVE UNFORTUNATE CONSEQUENCES DESCRIBED PARA 2 REFTEL B.

2. WHAT WE HAVE IN MIND IS RAISING QUESTION OF COMPENSATION FOR

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NATIONALIZED US PROPERTIES IN GENERAL (ONLY ONE OF THE 7 KNOWN CASES IS OIL RELATED). APART FROM OTHER CONSIDERATIONS, THIS PROPOSAL STANDS ON ITS OWN MERITS. IT IS BECOMING INCREASINGLY APPARENT HERE, PARTICULARLY THROUGH ESSO AND OXY EXPERIENCES WITH PARITY QUESTION, THAT IF NO OBJECTION IS TAKEN TO LARG ACTIONS, THE SILENCE MAY BE INTERPRETED AS ASSENT OR AT LEAST ACQUIESCENCE. THE LARG INITIATIVE THEN BECOMES ACCEPTED PROCEDURE AND EVEN A PRECEDENT. OBVIOUSLY, THE USG CANNOT ACCEPT THE PRECEDENT THAT US PROPERTIES CAN BE NATIONALIZED WITHOUT EFFECTIVE COMPENSATION, OR THAT INORDINATE DELAYS SHOULD OCCUR WITHOUT PAYMENT (MORE THAN 2 YEARS NOW IN THE CASE OF THE SEVENTH DAY ADVENTIST HOSPITAL). WE ALSO QUESTION THE LARG'S NOW STANDARD PROCEDURES FOR FIXING

COMPENSATION WHICH ARE ENTIRELY UNILATERAL AND ARBITRARY, WITHOUT ANY PROVISION FOR CONSULTATION (MUCH LESS NEGOTIATION) WITH THE INTEREST NATIONALIZED.

3. IT SEEMS TO US THAT THE CURRENT US LARG TALKS PRESENT US WITH AN EXCELLENT OPPORTUNITY TO ADDRESS THESE ISSUES. LARG HAS ON A NUMBER OF OCCASIONS CHARACTERIZED THE TALKS AS INTENDED TO CORRECT THE PAST AND PROVIDE THE BASIS FOR A NEW RELATIONSHIP. WHILE WE RECOGNIZE THAT THIS IS PRIMARILY RHETORIC, THE LARG'S OWN STATEMENTS DO PROVIDE US WITH AN OPPORTUNITY TO TRY TO DEAL WITH OTHER QUESTIONS ARISING FROM THE PAST AND WHICH ARE NOT RELATED TO OUR PAST MILITARY PRESENCE HERE. IT IS IN THIS CONTEXT THAT I WOULD LIKE TO ADDRESS THE BALFOUR DAY CLAIM, THE CHANCERY PROPERTY, AND COMPENSATION FOR NATIONALIZED US PRIVATE PROPERTIES. THE CONTEXT SEEMS TO ME TO BE A NATURAL ONE AND A DEFENSIBLE ONE.

4. IT MAY WELL BE THAT THE LARG WOULD NEVERTHELESS INTERPRET OUR DEMARCHE AS SOMEHOW CONNECTED WITH BP NATIONALIZATION. WE DO NOT REGARD THIS AS NECESSARILY A BAD THING PROVIDED WE COULD SO CONSTRUCT THE DEMARCHE AS TO BE ABLE TO DEFEND OURSELVES AGAINST POSSIBLE CHARGES OF INTERFERENCE. FACT REMAINS THAT WHAT LARG DOES ON MUCH PUBLICIZED BP ISSUE IS LIKELY TO SET PATTERN FOR ITS TREATMENT OF LESS WELL PUBLICIZED EARLIER CASES OF NATIONALIZATION. WE SHOULD THEREFORE TRY TO ASSURE THEY FULLY AWARE STRENGTH OF OUR VIEWS ON THIS SUBJECT. MOREOVER, WE SHOULD TRY DISCREETLY TO PUSH OUR CASES TO HEAD, RATHER THAN BOTTOM, OF LIST.

5. WHAT WE HAVE IN MIND IS MAKING FOLLOWING POINTS:

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(A) NOW THAT WE HAVE REACHED AGREEMENT ON TERMINATING PAST AGREEMENTS AND SETTLING CLAIMS (ASSUMING THAT IS THE CASE AT THE TIME), LET US TURN OUR ATTENTION TO SETTLING OTHER PROBLEMS ARISING FROM PAST.

(B) AMONG THESE ARE UNSETTLED QUESTIONS OF COMPENSATION FOR SOME 7 AMERICAN INTERESTS WHICH HAVE BEEN NATIONALIZED SINCE THE REVOLUTION. THE EARLIEST OF THESE ACTIONS TOOK PLACE MORE THAN TWO YEARS AGO YET NO SETTLEMENT HAS BEEN MADE TO OUR KNOWLEDGE. WHILE ACKNOWLEDGING THE SOVEREIGN RIGHT OF EXPROPRIATION FOR PUBLIC PURPOSES AND ON A NON-DISCRIMINATORY BASIS, MY GOVERNMENT STANDS FIRMLY ON THE REQUIREMENT OF INTERNATIONAL LAW THAT PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION BE PAID.

(C) IN VIEW OFTHE INCREASING LENGTH OF TIME WITHOUT A SETTLEMENT OF THE CLAIMS OF AMERICAN INTERESTSAFFECTED BY THESE ACTIONS, WE HAVE BEEN INSTRUCTED BY OUR GOVERNMENT TO URGE THE LARG TO REVIEW THE CASES AND TO SETTLE THEM PROMPTLY, ADEQUATELY AND EFFECTIVELY.

(D) WE HAVE ALSO BEEN INSTRUCTED TO POINT OUT THAT THE USUALLY ACCEPTED PROCEDURES FOR SETTLING SUCH CLAIMS INVOLVE A PROCESS IN WHICH BOTH SIDES HAVE AN OPPORTUNITY FREELY TO INTRODUCE AND DISCUSS FACTS, FIGURES AND ANALYSES WHICH BEAR ON THE CRITERIA OF ADEQUATE AND EFFECTIVE COMPENSATION. WE HOPE VERY MUCH THAT IN THE INTERESTS OF INTERNATIONAL LAW AND EQUITY, THE LARG WILL PROVIDE SUCH OPPORTUNITY FOR THE AMERICAN INTERESTS INVOLVED.

6. IF WE ARE TO TAKE AN INITIATIVE OF THIS KIND, WE SHOULD BE PREPARED TO DO SO AS SOON AS WE HAVE REACHED AGREEMENT ON THE TERMINATION OF THE AGREEMENTS AND THE SETTLEMENT OF GOVERNMENTAL CLAIMS. SINCE WE CONTINUE TO BE OPTIMISTIC THAT THIS MAY COME QUICKLY, WE REQUEST URGENT AUTHORIZATION TO MAKE THE FOREGOING DEMARCHE. GP-3.
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